

**BEFORE THE DIRECTOR  
DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF AUTOMOTIVE REPAIR  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**A DISCOUNT SMOG CHECK CENTERS #3**  
**RAMONA ESPINOZA, OWNER**  
6055 Dougherty Road  
Dublin, CA 94568

Automotive Repair Dealer Registration  
No. ARD 263071  
Smog Check, Test Only, Station  
License No. TC 263071

Respondent.

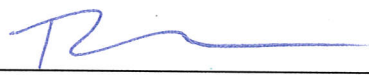
Case No. 79/14-76

**DECISION**

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective April 20<sup>th</sup>, 2016.

DATED: March 14, 2016

  
\_\_\_\_\_  
TAMARA COLSON  
Assistant General Counsel  
Department of Consumer Affairs

KAMALA D. HARRIS  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



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October 23, 2015

*Via Email Only*

Rebecca Harris  
Bureau of Automotive Repair  
10949 North Mather Boulevard  
Rancho Cordova, CA 95670

Re: RECOMMENDATION TO ADOPT STIPULATION  
In the Matter of the Accusation Against:  
A DISCOUNT SMOG CHECK CENTERS #3;  
RAMONA ESPINOZA, OWNER  
Bureau of Automotive Repair Case No. 79/14-76

Dear Ms. Harris:

Enclosed for consideration by the Director of Consumer Affairs are the Stipulated Settlement and Disciplinary Order in this matter. For the reasons stated below, our office recommends that the Director adopt the agreement and issue the enclosed Decision and Order.

The terms and conditions contained in the stipulation were coordinated with you and Greg Pearson prior to being offered to Respondent.

LICENSE INFORMATION

Ramona Espinoza, doing business as A Discount Smog Check Centers #3, was issued Automotive Repair Dealer Registration No. ARD 263071, on August 24, 2010, and Smog Check, Test Only, Station License No. TC 263071 on September 1, 2010.

CHARGES AND ADMISSIONS

The Accusation against Respondent was filed on January 6, 2014. It alleges that on October 18, 2012, Respondent committed the following violations:

False and Misleading Statements (Bus. & Prof. Code, § 9884.7, subd. (a)(1));

Failure to Provide Signed Document (Bus. & Prof. Code, § 9884.7);

Fraud (Bus. & Prof. Code, § 9884.7, subd. (a)(4));

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Failure to Provide Customer with Written Estimate (Bus. & Prof. Code, §§ 9884.7, subd. (a)(6), and 9884.9, subd. (a));

Violation of Motor Vehicle Inspection Program (Health & Saf. Code, §§ 44072.2, subd. (a); 44012; and 44015, subd. (b));

Violation of Motor Vehicle Inspection Program Regulations (Health & Saf. Code, § 44072.2, subd. (c) and 44012; Cal. Code Regs., tit. 16, and 44012; Cal. Code Regs., tit. 16, §§ 3340.35, subds. (c) and (d); 3340.41, subd. (c); 3340.42; 3353, subds. (a) and (c); and 3371);

Dishonesty, Fraud, or Deceit (Health & Saf. Code, § 44072.2, subd. (d)); and

Aiding or Abetting Unlicensed Person (Health & Saf. Code, § 44072.2, subd. (f).

As alleged in the Accusation, Respondent, along with technician Joseph Frank Gonderman (also a respondent) improperly smog certified two vehicles, one with ignition timing outside of manufacturer's specifications, and one that was "clean-piped." The Accusation further alleges that Respondent and Gonderman allowed an unlicensed individual to perform the inspections.

Respondent admits that a factual basis exists for the charges.

#### PROPOSED SETTLEMENT CONTRASTED WITH PENALTY GUIDELINES

The stipulation provides for Respondent's registration to be invalidated and for the smog check, test only, station license to be invalidated, but for the invalidation and revocation stayed, and for Respondent to be placed on three (3) years of probation, including payment of cost recovery in the amount of \$1,936.75.

The probationary terms are based on the Board's disciplinary guidelines and the discipline generally comports with the recommended penalties for Respondent's violations.

#### MITIGATING OR AGGRAVATING CIRCUMSTANCES

This is the first time Respondent has been before the Bureau in a disciplinary matter. The case is based upon incidents that occurred one day three years ago. Respondent has been cooperative in these proceedings. Respondent was not on the premises when the violations occurred and appears to have no knowledge of the violations. Technician Joseph Frank Gonderman has called several times to insist that the station owner was a "nice lady" who would never have permitted any misconduct. This appears to be an appropriate case for probation.

#### OTHER MATERIAL INFORMATION

The operator in the Bureau's undercover run was a Bureau employee who has since been terminated from Bureau employment. He would not be available as a witness if this case were to proceed to hearing. Not having him available to testify weakens the Bureau's case considerably.

Rebecca Harris  
October 23, 2015  
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The other respondent named in the Accusation, technician Joseph Frank Gonderman, has stipulated to the revocation of his licenses. (That stipulation is being submitted under separate cover.)

REASONS FOR RECOMMENDATION

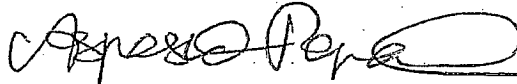
Based on the evidence in this case, this stipulation provides for meaningful discipline and a fair resolution of the charges in the Accusation for the following reasons.

The Accusation is based on one undercover run that occurred three years ago. There is no evidence that Respondent has engaged in repeated misconduct or that she was aware of the violations that occurred on the day of the undercover run. Moreover, the operator in the undercover run was a now discredited former Bureau employee who is unavailable to testify. If this case were to proceed to hearing, an Administrative Law Judge would likely recommend that Respondent be allowed to continue running her business, but be placed on probation. Being on probation will help ensure that Respondent complies with laws and regulations.

In light of all these considerations, this office recommends that the Director adopt the proposed stipulation as the decision in this case.

I hope the above information is sufficient to enable the Director to make a decision in this matter. If you have any questions, please do not hesitate to contact me at your earliest convenience.

Sincerely,



ASPASIA A. PAPA VASSILIOU  
Deputy Attorney General

For KAMALA D. HARRIS  
Attorney General

AAP:dbm

Enclosures: Proposed Stipulation and Accusation

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*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/14-76

13 **A DISCOUNT SMOG CHECK CENTERS #3**  
14 **RAMONA ESPINOZA, OWNER**  
6055 Dougherty Road  
Dublin, CA 94568

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 **Automotive Repair Dealer**  
16 **Registration No. ARD 263071**  
17 **Smog Check, Test Only, Station**  
License No. TC 263071

18 Respondent.

19  
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
21 entitled proceedings that the following matters are true:

22 PARTIES

23 1. Patrick Dorais ("Complainant") is the Chief of the Bureau of Automotive Repair. He  
24 brought this action solely in his official capacity and is represented in this matter by Kamala D.  
25 Harris, Attorney General of the State of California, by Aspasia A. Papavassiliou, Deputy Attorney  
26 General.

27 2. Respondent Ramona Espinoza ("Respondent"), owner of A Discount Smog Check  
28 Centers #3, is representing herself in this proceeding and has chosen not to exercise her right to

1 be represented by counsel.

2 3. On or about August 24, 2010, the Bureau of Automotive Repair issued Automotive  
3 Repair Dealer Registration No. ARD 263071 to Ramona Espinoza (Respondent) as owner of A  
4 Discount Smog Check Centers #3. The Automotive Repair Dealer Registration was in full force  
5 and effect at all times relevant to the charges brought in Accusation No. 79/14-76 and will expire  
6 on August 31, 2016, unless renewed.

7 4. On or about September 1, 2010, the Bureau of Automotive Repair issued Smog  
8 Check, Test Only, Station License No. TC 263071 to Ramona Espinoza (Respondent), as owner  
9 of A Discount Smog Check Centers #3. The Smog Check, Test Only, Station License was in full  
10 force and effect at all times relevant to the charges brought in Accusation No. 79/14-76 and will  
11 expire on August 31, 2016, unless renewed.

12 JURISDICTION

13 5. Accusation No. 79/14-76 was filed before the Director of Consumer Affairs  
14 (Director), for the Bureau of Automotive Repair (Bureau), and is currently pending against  
15 Respondent. The Accusation and all other statutorily required documents were properly served  
16 on Respondent on January 8, 2014. Respondent timely filed her Notice of Defense contesting the  
17 Accusation. A copy of Accusation No. 79/14-76 is attached as exhibit A and incorporated by  
18 reference.

19 ADVISEMENT AND WAIVERS

20 6. Respondent has carefully read, and understands the charges and allegations in  
21 Accusation No. 79/14-76. Respondent has also carefully read, and understands the effects of this  
22 Stipulated Settlement and Disciplinary Order.

23 7. Respondent is fully aware of her legal rights in this matter, including the right to a  
24 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
25 her own expense; the right to confront and cross-examine the witnesses against her; the right to  
26 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to  
27 compel the attendance of witnesses and the production of documents; the right to reconsideration  
28 and court review of an adverse decision; and all other rights accorded by the California

1 Administrative Procedure Act and other applicable laws.

2 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
3 every right set forth above.

4 CULPABILITY

5 9. Respondent understands and agrees that the charges and allegations in Accusation  
6 No. 79/14-76, if proven at a hearing, constitute cause for imposing discipline upon her  
7 Automotive Repair Dealer Registration and upon her Smog Check, Test Only, Station License.

8 10. For the purpose of resolving the Accusation without the expense and uncertainty of  
9 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual  
10 basis for the charges in the Accusation, and that Respondent hereby gives up her right to contest  
11 those charges.

12 11. Respondent agrees that her Automotive Repair Dealer Registration and Smog Check,  
13 Test Only, Station License are subject to discipline and she agrees to be bound by the Director's  
14 probationary terms as set forth in the Disciplinary Order below.

15 CONTINGENCY

16 12. This stipulation shall be subject to approval by the Director of Consumer Affairs or  
17 the Director's designee. Respondent understands and agrees that counsel for Complainant and the  
18 staff of the Bureau of Automotive Repair may communicate directly with the Director and staff of  
19 the Department of Consumer Affairs regarding this stipulation and settlement, without notice to  
20 or participation by Respondent. By signing the stipulation, Respondent understands and agrees  
21 that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the  
22 Director considers and acts upon it. If the Director fails to adopt this stipulation as the Decision  
23 and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except  
24 for this paragraph, it shall be inadmissible in any legal action between the parties, and the  
25 Director shall not be disqualified from further action by having considered this matter.

26 13. The parties understand and agree that Portable Document Format (PDF) and facsimile  
27 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format  
28 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Director may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Automotive Repair Dealer Registration No. ARD 263071 issued to Ramona Espinoza (Respondent) as owner of A Discount Smog Check Centers #3, is invalidated, and that Smog Check, Test Only, Station License No. TC 263071, issued to Ramona Espinoza (Respondent) as owner of A Discount Smog Check Centers #3, is revoked. However, the invalidation and revocation are stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **Obey All Laws.** Comply with all statutes, regulations and rules governing automotive inspections, estimates and repairs.

2. **Post Sign.** Post a prominent sign, provided by the Bureau, indicating the beginning and ending dates of the suspension and indicating the reason for the suspension. The sign shall be conspicuously displayed in a location open to and frequented by customers and shall remain posted during the entire period of actual suspension.

3. **Reporting.** Respondent or Respondent's authorized representative must report in person or in writing as prescribed by the Bureau of Automotive Repair, on a schedule set by the Bureau, but no more frequently than each quarter, on the methods used and success achieved in maintaining compliance with the terms and conditions of probation.

4. **Report Financial Interest.** Within 30 days of the effective date of this action, report any financial interest which any partners, officers, or owners of the Respondent facility may have



1 in any other business required to be registered pursuant to Section 9884.6 of the Business and  
2 Professions Code.

3 5. **Random Inspections.** Provide Bureau representatives unrestricted access to inspect  
4 all vehicles (including parts) undergoing repairs, up to and including the point of completion.

5 6. **Jurisdiction.** If an accusation is filed against Respondent during the term of  
6 probation, the Director of Consumer Affairs shall have continuing jurisdiction over this matter  
7 until the final decision on the accusation, and the period of probation shall be extended until such  
8 decision.

9 7. **Violation of Probation.** Should the Director of Consumer Affairs determine that  
10 Respondent has failed to comply with the terms and conditions of probation, the Department may,  
11 after giving notice and opportunity to be heard, temporarily or permanently invalidate the  
12 registration or suspend or revoke the license.

13 8. **False and Misleading Advertising.** If the accusation involves false and misleading  
14 advertising, during the period of probation, Respondent shall submit any proposed advertising  
15 copy, whether revised or new, to the Bureau at least thirty (30) days prior to its use.

16 9. **Restrictions.** During the period of probation, Respondent shall not perform any form  
17 of smog inspection, or emission system diagnosis or repair, until Respondent has purchased,  
18 installed, and maintained the diagnostic and repair equipment prescribed by BAR necessary to  
19 properly perform such work, and BAR has been given 10 days notice of the availability of the  
20 equipment for inspection by a BAR representative.

21 10. **Cost Recovery.** Payment to the Bureau of \$1,936.75 in cost recovery shall be made  
22 in 24 equal monthly payments, to be received no later than twelve months before probation  
23 terminates. Failure to complete payment of cost recovery within this time frame shall constitute a  
24 violation of probation which may subject Respondent's registration and license to outright  
25 invalidation or revocation; however, the Director or the Director's Bureau of Automotive Repair  
26 designee may elect to continue probation until such time as reimbursement of the entire cost  
27 recovery amount has been made to the Bureau.


Att<sup>o</sup> Mrs  
Aspasia

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Automotive Repair Dealer Registration and Smog Check, Test Only, Station License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Director of Consumer Affairs.

DATED:

10-2-15

  
RAMONA ESPINOZA, Owner  
A DISCOUNT SMOG CENTERS #3  
Respondent


ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 10-22-2015

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
DIANN SOKOLOFF  
Supervising Deputy Attorney General

  
ASPASIA A. PAPAVASSILIOU  
Deputy Attorney General  
Attorneys for Complainant

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**Exhibit A**

**Accusation No. 79/14-76**

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 ASPASIA A. PAPAVASSILIOU  
Deputy Attorney General  
4 State Bar No. 196360  
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*Attorneys for Complainant*

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10 FOR THE BUREAU OF AUTOMOTIVE REPAIR  
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12 In the Matter of the Accusation Against:

Case No.

79/14-76

13 A DISCOUNT SMOG CHECK CENTERS # 3  
RAMONA ESPINOZA, OWNER  
14 6055 Dougherty Road  
Dublin, CA 94568  
15

ACCUSATION

(Smog Check)

16 Automotive Repair Dealer  
Registration No. ARD 263071  
17 Smog Check, Test Only, Station  
License No. TC 263071

18 and

19 JOSEPH FRANK GONDERMAN  
1910 Main Street  
20 Santa Clara, CA 95050

21 Smog Check Inspector  
License No. EO 632369  
22 Smog Check Repair Technician  
License No. EI 632369  
23 (formerly Advanced Emission Specialist Technician  
License No. EA632369)  
24

Respondents.

25  
26 Complainant alleges:

27 PARTIES

28 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as

1 the Chief of the Bureau of Automotive Repair (Bureau), Department of Consumer Affairs.

2 **A Discount Smog Check Centers # 3 (Ramona Espinoza, Owner)**

3 2. On or about August 24, 2010, the Bureau issued Automotive Repair Dealer  
4 Registration Number ARD 263071 to Ramona Espinoza as owner of A Discount Smog Check  
5 Centers # 3 (Respondent Espinoza). The registration will expire on August 31, 2014, unless  
6 renewed.

7 3. On or about September 1, 2010, the Bureau issued Smog Check, Test Only, Station  
8 License Number TC 263071 to Respondent Espinoza. The license will expire on August 31,  
9 2014, unless renewed.

10 **Joseph Frank Gonderman**

11 4. On or about August 9, 2010, the Bureau issued Advanced Emission Specialist  
12 Technician License No. EA 632369, subsequently redesignated as Smog Check Inspector License  
13 No. EO 632369 and Smog Check Repair Technician License No. EI 632369, to Joseph Frank  
14 Gonderman (Respondent Gonderman).<sup>1</sup> The license will expire on August 31, 2014, unless  
15 renewed.

16 **JURISDICTION**

17 5. This Accusation is brought before the Director of Consumer Affairs (Director) for the  
18 Bureau, under the authority of the following laws:

19 6. Section 477 of the Business and Professions Code provides, in pertinent part, that  
20 "Board" includes "bureau," "commission," "committee," "department," "division," "examining  
21 committee," "program," and "agency." "License" includes certificate, registration or other means  
22 to engage in a business or profession regulated by the Code;

23 7. Section 9884.13 of the Business and Professions Code provides, in pertinent part, that  
24 the expiration of a valid registration shall not deprive the director or chief of jurisdiction to  
25

26 <sup>1</sup> Effective August 1, 2012, California Code of Regulations, title 16, sections 3340.28,  
27 3340.29, and 3340.30 were amended to implement a license restructuring from the Advanced  
28 Emission Specialist Technician (EA) license and Basic Area Technician (EB) license to Smog  
Check Inspector (EO) license and/or Smog Check Repair Technician (EI) license.

1 proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision  
2 invalidating a registration temporarily or permanently.

3 8. Section 44002 of the Health and Safety Code provides, in pertinent part, that the  
4 Director has all the powers and authority granted under the Automotive Repair Act for enforcing  
5 the Motor Vehicle Inspection Program.

6 9. Section 44072.6 of the Health and Safety Code provides, in pertinent part, that the  
7 expiration or suspension of a license by operation of law, or by order or decision of the Director  
8 of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive  
9 the Director of jurisdiction to proceed with disciplinary action.

10 10. Section 44072.8 of the Health and Safety Code states:

11 "When a license has been revoked or suspended following a hearing under this article, any  
12 additional license issued under this chapter in the name of the licensee may be likewise revoked  
13 or suspended by the director."

#### 14 STATUTORY AND REGULATORY PROVISIONS

##### 15 Business and Professions Code

16 11. Section 9884.7 of the Business and Professions Code states, in pertinent part:

17 (a) The director, where the automotive repair dealer cannot show there was a bona  
18 fide error, may deny, suspend, revoke, or place on probation the registration of an  
19 automotive repair dealer for any of the following acts or omissions related to the  
20 conduct of the business of the automotive repair dealer, which are done by the  
21 automotive repair dealer or any automotive technician, employee, partner, officer, or  
22 member of the automotive repair dealer.

23 (1) Making or authorizing in any manner or by any means whatever any statement  
24 written or oral which is untrue or misleading, and which is known, or which by the  
25 exercise of reasonable care should be known, to be untrue or misleading.

26 ...  
27 (3) Failing or refusing to give to a customer a copy of any document requiring his or  
28 her signature, as soon as the customer signs the document.

(4) Any other conduct that constitutes fraud.

26 ...  
27 (6) Failure in any material respect to comply with the provisions of this chapter or  
28 regulations adopted pursuant to it.

1 12. Section 9884.9, subdivision (a), of the Business and Professions Code states:

2 The automotive repair dealer shall give to the customer a written estimated price for  
3 labor and parts necessary for a specific job. No work shall be done and no charges  
4 shall accrue before authorization to proceed is obtained from the customer. No charge  
5 shall be made for work done or parts supplied in excess of the estimated price without  
6 the oral or written consent of the customer that shall be obtained at some time after it  
7 is determined that the estimated price is insufficient and before the work not  
8 estimated is done or the parts not estimated are supplied. Written consent or  
9 authorization for an increase in the original estimated price may be provided by  
10 electronic mail or facsimile transmission from the customer. The bureau may specify  
11 in regulation the procedures to be followed by an automotive repair dealer if an  
12 authorization or consent for an increase in the original estimated price is provided by  
13 electronic mail or facsimile transmission. If that consent is oral, the dealer shall make  
14 a notation on the work order of the date, time, name of person authorizing the  
15 additional repairs and telephone number called, if any, together with a specification of  
16 the additional parts and labor and the total additional cost, and shall do either of the  
17 following:

18 (1) Make a notation on the invoice of the same facts set forth in the notation on the  
19 work order.

20 (2) Upon completion of the repairs, obtain the customer's signature or initials to an  
21 acknowledgment of notice and consent, if there is an oral consent of the customer to  
22 additional repairs, in the following language:

23 "I acknowledge notice and oral approval of an increase in the original estimated price.

24 \_\_\_\_\_  
25 (signature or initials)"

26 Nothing in this section shall be construed as requiring an automotive repair dealer to  
27 give a written estimated price if the dealer does not agree to perform the requested  
28 repair.

29 Health and Safety Code

30 13. Section 44012 of the Health and Safety Code states, in pertinent part:

31 The test at the smog check stations shall be performed in accordance with procedures  
32 prescribed by the department and may require loaded mode dynamometer testing in  
33 enhanced areas, two-speed idle testing, testing utilizing a vehicle's onboard diagnostic  
34 system, or other appropriate test procedures as determined by the department in  
35 consultation with the state board. The department shall implement testing using  
36 onboard diagnostic systems, in lieu of loaded mode dynamometer or two-speed idle  
37 testing, on model year 2000 and newer vehicles only, beginning no earlier than  
38 January 1, 2013. However, the department, in consultation with the state board, may  
39 prescribe alternative test procedures that include loaded mode dynamometer or two-  
40 speed idle testing for vehicles with onboard diagnostic systems that the department  
41 and the state board determine exhibit operational problems. The department shall  
42 ensure, as appropriate to the test method, the following:

43 ...

1 (f) A visual or functional check is made of emission control devices specified by the  
2 department, including the catalytic converter in those instances in which the  
3 department determines it to be necessary to meet the findings of Section 44001. The  
4 visual or functional check shall be performed in accordance with procedures  
5 prescribed by the department.

6 14. Section 44014, subdivision (a), of the Health and Safety Code states:

7 "Except as otherwise provided in this chapter, the testing and repair portion of the program  
8 shall be conducted by smog check stations licensed by the department, and by smog check  
9 technicians who have qualified pursuant to this chapter."

10 15. Section 44015, subdivision (b), of the Health and Safety Code states:

11 "If a vehicle meets the requirements of Section 44012, a smog check station licensed to  
12 issue certificates shall issue a certificate of compliance or a certificate of noncompliance."

13 16. Section 44032 of the Health and Safety Code states:

14 "No person shall perform, for compensation, tests or repairs of emission control devices or  
15 systems of motor vehicles required by this chapter unless the person performing the test or repair  
16 is a qualified smog check technician and the test or repair is performed at a licensed smog check  
17 station. Qualified technicians shall perform tests of emission control devices and systems in  
18 accordance with Section 44012."

19 17. Section 44072.2 of the Health and Safety Code states, in pertinent part:

20 The director may suspend, revoke, or take other disciplinary action against a license  
21 as provided in this article if the licensee, or any partner, officer, or director thereof,  
22 does any of the following:

23 (a) Violates any section of this chapter and the regulations adopted pursuant to it,  
24 which related to the licensed activities.

25 ...

26 (c) Violates any of the regulations adopted by the director pursuant to this chapter.

27 (d) Commits any act involving dishonesty, fraud, or deceit whereby another is  
28 injured.

...

(f) Aids or abets unlicensed persons to evade the provisions of this chapter.

California Code of Regulations

18. California Code of Regulations, title 16, section 3340.30, states, in pertinent part:



1 "A licensed smog check inspector and/or repair technician shall comply with the following  
2 requirements at all times while licensed:

3 (a) Inspect, test and repair vehicles, as applicable, in accordance with section 44012 of the  
4 Health and Safety Code, section 44035 of the Health and Safety Code, and section 3340.42 of this  
5 article."

6 19. California Code of Regulations, title 16, section 3340.35, states, in pertinent part:

7 ...

8 (c) A licensed station shall issue a certificate of compliance or noncompliance to the  
9 owner or operator of any vehicle that has been inspected in accordance with the  
10 procedures specified in section 3340.42 of this article and has all the required  
11 emission control equipment and devices installed and functioning correctly....

12 ...

13 (d) No person shall sell, issue, cause or permit to be issued any certificate purported  
14 to be a valid certificate of compliance or noncompliance unless duly licensed to do  
15 so.

16 20. California Code of Regulations, title 16, section 3340.41, subdivision (c), states:

17 "No person shall enter into the emissions inspection system any vehicle identification  
18 information or emission control system identification data for any vehicle other than the one  
19 being tested. Nor shall any person knowingly enter into the emissions inspection system any false  
20 information about the vehicle being tested. "

21 21. California Code of Regulations, title 16, section 3340.42, states, in pertinent part:

22 Smog check inspection methods are prescribed in the Smog Check Manual,  
23 referenced by section 3340.45.

24 (a) All vehicles subject to a smog check inspection, shall receive one of the following  
25 test methods:

26 (1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-  
27 year vehicle, except diesel-powered, registered in the enhanced program areas of the  
28 state. The loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon  
dioxide and oxides of nitrogen emissions, as contained in the bureau's specifications  
referenced in subsection (a) of Section 3340.17 of this article. The loaded-mode test  
shall use Acceleration Simulation Mode (ASM) test equipment, including a chassis  
dynamometer, certified by the bureau.

On and after March 31, 2010, exhaust emissions from a vehicle subject to this  
inspection shall be measured and compared to the emissions standards shown in the  
Vehicle Look-up Table (VLT) Row Specific Emissions Standards (Cutpoints) Table,

1 dated March 2010, which is hereby incorporated by reference. If the emissions  
2 standards for a specific vehicle are not included in this table then the exhaust  
3 emissions shall be compared to the emissions standards set forth in TABLE I or  
4 TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured  
5 emissions are less than or equal to the applicable emission standards specified in the  
6 applicable table;

7 ...  
8  
9 (b) In addition to subsection (a), all vehicles subject to the smog check program shall  
10 receive the following:

11 (1) A visual inspection of emission control components and systems to verify the  
12 vehicle's emission control systems are properly installed.

13 (2) A functional inspection of emission control systems as specified in the Smog  
14 Check Manual, referenced by section 3340.45, which may include an OBD test, to  
15 verify their proper operation.

16 22. California Code of Regulations, title 16, section 3340.45, states:

17 (a) All Smog Check inspections shall be performed in accordance with requirements  
18 and procedures prescribed in the following:

19 (1) Smog Check Inspection Procedures Manual, dated August 2009, which is hereby  
20 incorporated by reference. This manual shall be in effect until subparagraph (2) is  
21 implemented.

22 (2) Smog Check Manual, dated 2013, which is hereby incorporated by reference.  
23 This manual shall become effective on or after January 1, 2013.

24 23. California Code of Regulations, title 16, section 3353, states, in part:

25 "No work for compensation shall be commenced and no charges shall accrue without  
26 specific authorization from the customer in accordance with the following requirements:

27 (a) Estimate for Parts and Labor. Every dealer shall give to each customer a written  
28 estimated price for labor and parts for a specific job.

29 ...  
30 (c) Additional Authorization. The dealer shall obtain the customer's authorization before  
31 any additional work not estimated is done or parts not estimated are supplied. This authorization  
32 shall be in written, oral, or electronic form, and shall describe additional repairs, parts, labor and  
33 the total additional cost."

34 24. California Code of Regulations, title 16, section 3371, states, in part:

35 "No dealer shall publish, utter, or make or cause to be published, uttered, or made any false  
36 or misleading statement or advertisement which is known to be false or misleading, or which by

1 the exercise of reasonable care should be known to be false or misleading."

2  
3 25. California Code of Regulations, title 16, section 3373, states:

4 "No automotive repair dealer or individual in charge shall, in filling out an estimate,  
5 invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter,  
6 withhold therefrom or insert therein any statement or information which will cause any such  
7 document to be false or misleading, or where the tendency or effect thereby would be to mislead  
8 or deceive customers, prospective customers, or the public."

9 COST RECOVERY PROVISION

10 26. Section 125.3 of the Code provides, in pertinent part, that a Board may request the  
11 administrative law judge to direct a licentiate found to have committed a violation or violations of  
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
13 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
14 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
15 included in a stipulated settlement.

16 FACTUAL BACKGROUND

17 27. On or about October 18, 2012, Respondents improperly smog certified two  
18 vehicles—a 1990 Mercury with ignition timing outside of manufacturer's specifications, and a  
19 1991 Honda Accord that was "clean piped."<sup>2</sup> In addition, Respondents allowed an unlicensed  
20 individual to perform the inspections, and in the case of one vehicle, failed to provide the  
21 customer with a written estimate and then charged the customer more than the price originally  
22 quoted. The circumstances are described in further detail in paragraphs 28 to 33, below.

23 28. A Bureau representative (customer) participating in an undercover operation visited  
24 Respondent Espinoza's station and asked Respondent Gonderman to perform a smog check for a

25  
26 <sup>2</sup> In clean piping, the smog technician enters vehicle information into the Emission  
27 Inspection System machine (EIS) for the vehicle he wishes to certify but then samples the exhaust  
28 of a different (clean running) vehicle. Using this method, the technician is able to issue a smog  
certificate to a vehicle that is not present at the facility or would not be able to pass the emissions  
test using its own exhaust.

1 1990 Mercury. As part of the undercover operation, the vehicle's ignition timing was adjusted  
2 outside of the manufacturer's specifications. This adjustment would have caused the vehicle to  
3 fail a properly conducted smog inspection.

4 29. The customer presented a coupon to Respondent Gonderman advertising smog checks  
5 for \$34.95 but Respondent Gonderman stated the coupon only applied to 1996 or newer vehicles,  
6 and that a smog check for the Mercury would be \$70. The customer agreed to have the inspection  
7 performed, and signed a work order, but did not receive a copy of the work order or a written  
8 estimate.

9 30. The customer then observed a man later identified as Trevor Hall perform the  
10 inspection. Hall did not have a license authorizing him to perform smog inspections. Hall  
11 inserted and removed the Emissions Inspection System machine (EIS), performed the  
12 Acceleration Simulation Mode (ASM) tailpipe emissions test, and made entries into the EIS.  
13 Respondent Gonderman was not present at the inspection bay during this process. At the  
14 conclusion of the inspection, the EIS transmitted the results of the inspection to the Vehicle  
15 Identification Database (VID). Information from the VID indicates that the Mercury was tested  
16 between 13:51 and 13:56 hours with Respondent Gonderman as the inspector/technician.

17 31. Hall never checked the vehicle's ignition timing. He never performed the Low  
18 Pressure Fuel Evaporative Test (LPFET). And he never opened the compartment door to verify  
19 the presence of a fuel cap, let alone perform the required functional test of the fuel cap.  
20 Respondent Gonderman did not perform any of these tests, either.

21 32. After completion of the smog inspection, Respondent Gonderman spoke to Hall at the  
22 EIS, then left to speak with another customer. Hall then performed a second inspection of the  
23 Mercury. This second inspection included inserting and removing the EIS exhaust sample probe,  
24 performing the ASM tailpipe emissions test, and making entries into the EIS. Hall also made  
25 entries into LPFET system, even though the LPFET system was never connected to the Mercury.  
26 Respondent Gonderman was not present at the inspection bay during this process. Information  
27 from the VID and VIR indicates that a 1991 Honda Accord (Honda) was inspected and certified  
28 from 14:00-14:03 hours with Respondent Gonderman as the inspector/technician. In fact, the

1 only vehicle being tested at the station at the time was the Mercury, indicating that the Mercury  
2 was used to "clean-pipe" the Honda.

3 33. After the inspections, Respondent Gonderman told the customer that the Mercury had  
4 passed smog inspection and that the price was \$75. When the customer asked why the price was  
5 higher than originally quoted, Respondent Gonderman replied that the \$70 was just an estimate,  
6 that he could not predict how much a smog check would cost until after the fact. The customer  
7 paid the \$75 and was provided with an invoice and the Vehicle Inspection Report (VIR).

8 FIRST CAUSE FOR DISCIPLINE

9 (False and Misleading Statements)

10 34. Respondent Espinoza has subjected her automotive repair dealer registration to  
11 discipline because she made false or misleading statements in violation of Business and  
12 Professions Code section 9884.7, subdivision (a)(1). As described in paragraph 33, above,  
13 Respondent's employee made a false statement that he could not provide an accurate estimate for  
14 the performance of the smog inspection of the Mercury until after the inspection.

15 SECOND CAUSE FOR DISCIPLINE

16 (Failure to Provide Signed Document)

17 35. Respondent Espinoza has subjected her automotive repair dealer registration to  
18 discipline because she failed to provide a copy of a signed document to a customer as soon as he  
19 signed it in violation of Business and Professions Code section 9884.7, subdivision (a)(3). As  
20 described in paragraph 29, above, Respondent's employee failed to provide a copy of the signed  
21 work order for the smog inspection of the Mercury.

22 THIRD CAUSE FOR DISCIPLINE

23 (Fraud)

24 36. Respondent Espinoza has subjected her automotive repair dealer registration to  
25 discipline because she committed fraud in violation of Business and Professions Code section  
26 9884.7, subdivision (a)(4). As described in paragraphs 27-33 above, she issued certificates of  
27 compliance for the Mercury and Honda without performing bona fide smog inspections, thus  
28 depriving the people of California the protections afforded by the Motor Vehicle Inspection

1 Program.

2 FOURTH CAUSE FOR DISCIPLINE

3 (Violation of Automotive Repair Act: Failure to Provide Customer with Written Estimate)

4 37. Respondent Espinoza has subjected her automotive repair dealer registration to  
5 discipline because she violated the Automotive Repair Act when she failed to provide a customer  
6 with a written estimate for parts and labor for a specific job and then failed to obtain the  
7 customer's authorization before exceeding the original estimated price in violation of Business  
8 and Professions Code sections 9884.7, subdivision (a)(6) and 9884.9, subdivision (a). As  
9 described in paragraphs 29 and 33 above, she failed to provide a written estimate to the customer  
10 before performing the smog inspection of the Mercury and then failed to obtain authorization to  
11 exceed the original oral estimate.

12 FIFTH CAUSE FOR DISCIPLINE

13 (Violation of Motor Vehicle Inspection Program)

14 38. Respondent Espinoza has subjected her smog check, test only, station license to  
15 discipline and Respondent Gonderman has subjected his smog check inspector license and smog  
16 check repair technician license to discipline because Respondents failed to comply with the Motor  
17 Vehicle Inspection Program, in violation of Health and Safety Code section 44072.2, subdivision  
18 (a). As described in paragraphs 27-33 above, Respondents failed to properly smog check the  
19 Mercury and Honda, in violation of Health and Safety Code section 44012, and they improperly  
20 issued certificates of compliance for the vehicles in violation of Health and Safety Code section  
21 44015, subdivision (b).

22 SIXTH CAUSE FOR DISCIPLINE

23 (Violation of Motor Vehicle Inspection Program Regulations)

24 39. Respondent Espinoza has subjected her smog check, test-only, station license to  
25 discipline and Respondent Gonderman has subjected his smog check inspector license and smog  
26 check repair technician license to discipline because Respondents Espinoza and Gonderman  
27 failed to comply with regulations pertaining to the Motor Vehicle Inspection Program, in  
28 violation of Health and Safety Code section 44072.2, subdivision (c), as described in paragraphs

1 27-33 above and as set forth in the subparagraphs, below.

2 (A) Respondent Gonderman failed to inspect the Mercury or Honda in accordance with  
3 Health and Safety Code section 44012. (Cal. Code Regs., tit. 16, § 3340.31, subd. (a).)

4 (B) Respondent Espinoza issued smog check certificates of compliance for the Mercury  
5 and Honda without performing proper emission control tests or inspections. (Cal. Code Regs., tit.  
6 16, § 3340.35, subd. (c).)

7 (C) Respondent Espinoza allowed an unlicensed person to issue smog certificates of  
8 compliance. (Cal. Code Regs., tit. 16, § 3340.35, subd. (d).)

9 (D) Respondents Espinoza and Gonderman allowed an unlicensed technician to make  
10 false entries into the EIS to perform smog check inspections and issue smog check certificates of  
11 compliance. (Cal. Code Regs., tit. 16, § 3340.41, subd. (c).)

12 (E) Respondents Espinoza and Gonderman failed to perform an emissions test regarding  
13 the Honda, failed to perform a visual inspection of the Honda's emission control systems, and  
14 failed to perform any functional inspection of the Honda's emission control systems; in addition,  
15 regarding the Mercury, Respondents Espinoza and Gonderman failed to verify the presence of a  
16 fuel cap, failed to functionally check the gasoline filler cap's integrity, failed to functionally  
17 verify the proper setting of the ignition timing, and failed to perform a low pressure check of the  
18 fuel evaporative control system. (Cal. Code Regs., tit. 16, § 3340.42.)

19 (F) Respondent Espinoza failed to provide the Mercury customer with a written estimates  
20 for parts and labor for a specific job, and exceeded the oral estimate without prior authorization  
21 from the customer. (Cal. Code Regs., tit. 16, § 3353, subds. (a) and (c).)

22 (G) Respondents Espinoza and Gonderman made false and misleading statements in the  
23 issuance of certificates of compliance for the Mercury and Honda; in addition, Respondent  
24 Gonderman, acting for Respondent Espinoza, made a false statement to the Mercury customer  
25 that the station could not provide an estimate for the smog check until after the inspection. (Cal.  
26 Code Regs., tit. 16, § 3371.)

27 (H) Respondents Espinoza and Gonderman created false or misleading records by causing  
28 false entries to be made into the EIS in order to produce false VIRs and issue false certificates of

1 compliance for the Mercury and Honda. (Cal. Code Regs., tit. 16, § 3340.41, subd. (c).)

2 SEVENTH CAUSE FOR DISCIPLINE

3 (Dishonesty, Fraud or Deceit)

4 40. Respondent Espinoza has subjected her smog check, test only, station license to  
5 discipline and Respondent Gonderman has subjected his smog check inspector license and smog  
6 check repair technician license to discipline because Respondents Espinoza and Gonderman  
7 committed acts of dishonesty, fraud, or deceit, in violation of Health and Safety Code section  
8 44072.2, subdivision (d). As described in paragraphs 27-33 above, Respondents caused the  
9 issuance of certificates of compliance for the Mercury and Honda without performing bona fide  
10 smog inspections, thus depriving the people of California the protections afforded by the Motor  
11 Vehicle Inspection Program.

12 EIGHTH CAUSE FOR DISCIPLINE

13 (Aiding or Abetting Unlicensed Person)

14 41. Respondent Espinoza has subjected her smog check, test only, station license to  
15 discipline and Respondent Gonderman has subjected his smog check inspector license and smog  
16 check repair technician license to discipline because Respondents Espinoza and Gonderman aided  
17 and abetted an unlicensed person to evade the provisions of the Motor Vehicle Inspection  
18 Program in violation of Health and Safety Code section 44072.2, subdivision (f). As described in  
19 paragraphs 30-32, above, they allowed Trevor Hall to perform smog check inspections of the  
20 Mercury and Honda

21 PRAYER

22 THEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
23 Accusation, and that following the hearing, the Director of Consumer Affairs issue a decision:

- 24 1. Revoking or suspending Automotive Repair Dealer Registration Number ARD  
25 263071, issued to Ramona Espinoza;
- 26 2. Revoking or suspending Smog Check, Test Only, Station License Number TC  
27 263071, issued to Ramona Espinoza;
- 28 3. Ordering Ramona Espinoza to pay the Bureau of Automotive Repair the reasonable



1 costs of the investigation and enforcement of this case, under Business and Professions Code  
2 section 125.3;

3 4. Revoking or suspending Smog Check Inspector License No. EO 632369, issued to  
4 Joseph Frank Gonderman;

5 5. Revoking or suspending Smog Check Repair Technician License No. EI 632369,  
6 issued to Joseph Frank Gonderman;

7 6. Ordering Joseph Frank Gonderman to pay the Bureau of Automotive Repair the  
8 reasonable costs of the investigation and enforcement of this case, under Business and  
9 Professions Code section 125.3;

10 7. Taking such other and further action as deemed necessary and proper.

11  
12 DATED:

January 6, 2014

*Patrick Dorais*

PATRICK DORAIS  
Chief  
Bureau of Automotive Repair  
Department of Consumer Affairs  
State of California  
Complainant

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